

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**DEFENDANT'S MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS ALL FRUITS OF WARRANTLESS SEARCH**

Defendant Eduardo Rodriguez submits this memorandum in support of his motion to suppress all fruits of a warrantless search of a bedroom located at 285 Green Street in Brockton, Massachusetts. The court should suppress all fruits, including all statements attributed to Mr. Rodriguez at all times after he was confronted by Brockton Police officers, because the search was conducted without a warrant, without consent and without any other legally sufficient excuse for not obtaining a warrant.

Relevant Factual Background

The following alleged facts are taken from discovery provided by the government.

On August 28, 2004 at approximately 3:30 am, Brockton Police officers responded to the scene of a domestic disturbance. They were told that Mr. Rodriguez, who was known to the complainants and had fathered two children with one, had fondled another occupant of the apartment, a teenager who was not his daughter, and had struck her in the head with a metal object. The occupants identified 285 Green Street Brockton as Mr. Rodriguez' address. *See* Brockton Police Report, attached hereto.

Police proceeded to 285 Green Street, which is a half-way house known as "Oxford House." They were admitted to the building by an occupant, Patrick Callahan, who identified a bedroom as belonging to Mr. Rodriguez. Police knocked on the partially

opened door to the bedroom and yelled for Mr. Rodriguez by name. He immediately came to the door in boxer shorts and socks. He exited the bedroom and was questioned in a second-floor hallway. There, after he allegedly was given Miranda warnings, he allegedly consented to a search of his bedroom for weapons. Police located two boxes of ammunition in the bedroom. At some point, police handcuffed Mr. Rodriguez, arrested him, removed him from the building and placed him in handcuffs. *Id.*

Mr. Rodriguez was questioned by the Brockton Police at the station. He was also questioned by ATF agents about the ammunition seized during the warrantless search, among other things.

At no time did Mr. Rodriguez consent to a search of a bedroom for weapons. Police arrested him in the hallway after he exited the bedroom, cuffed him and took him to the cruiser. *See Affidavit of Eduardo Rodriguez.*

Argument

The government bears the burden of proving that a warrantless search and seizure fall within a recognized exception to the warrant requirement. *United States v. Lewis*, 816 F. Supp 789, 792 (D. Mass. 1993); *United States v. Cruz Jimenez*, 894 F.2d 1, 6 (1st Cir. 1990).

Here, no such exception applies. Police arrived at 285 Green Street, yelled for Mr. Rodriguez and immediately arrested and removed him from the building. Mr. Rodriguez did not give consent for a search – the officers' articulated basis for the search. There were no exigent circumstances, this was not a legitimate protective sweep or a valid search incident to arrest and it was not justified by any exception to the warrant requirement.

Conclusion

For all of the foregoing reasons, the court should suppress the ammunition seized from the bedroom, all other items seized and all fruits of the warrantless search and seizure, including all statements allegedly made by Mr. Rodriguez to all law enforcement personnel.

EDUARDO RODRIGUEZ
By his attorney,

/s/ *E. Peter Parker*

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Certificate of Service

I, E. Peter Parker, certify that I understand that all counsel will receive electronic notice of the electronic filing of this pleading.

/s/ *E. Peter Parker*
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